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5/019/030
DOGM
MINERALS PROGRAM
FILE COPY

PLEASE GIVE THIS MESSAGE TO:

NAME: Lowell Braxton

COMPANY: Mined Land - State of Utah

FAX #: (801) 359-3940

FROM: Skip Edwards

TELEPHONE #: 303/243-1725

OUR FAX #: 303/245-5176

IF TRANSMITTAL PROBLEM, CALL: Kara

TOTAL NUMBER OF PAGES INCLUDING FAX COVER SHEET: 24

DATE: 10-12-95

TIME: 9:00 Am

Mr. Braxton: Skip asked me to fax you a copy of this report - he will follow up with a phone call later this afternoon.

Thank You -

**UTAH WESTWATER CANYON WILDERNESS ACREAGE
DELETION UNETHICAL AND NOT JUSTIFIED**

INTRODUCTION

The following report was written with the intent to provide you with an awareness of the removal of over 1800 acres of extremely critical land from the Westwater Canyon Wilderness Study Area, UT-060-118, as being presented by the Utah Wilderness Bills HR 1745 and S 884, and how this removal was accomplished. The key points concerning the removal of this acreage from the bills are as follows:

- Deletion is Based on Undue Influence and Conflict of Interest by an Elected Public Official
- Deletion is Contrary to BLM Wilderness Recommendation
- Approximately 1800 Acres are Removed Arbitrarily
- Unpatented Mining Claims are not a Property Right
- Illegal Activities are Used as Justification for the Deletion
- Inclusion of the Deleted Portion is Critical to this Potential Wilderness Area's Integrity

The primary result being sought is the reinstating of these 1800 plus acres in any wilderness bill for Utah passed by congress. The secondary asking is that the example of how the 1800 plus acres was removed from Westwater Canyon in the Utah Bills be studied to question the validity of the process used to arrive at the remaining acreage in these bills as they pertain to the best interests of the American people in general and your constituencies in particular.

My knowledge in this matter derives from being the Westwater River Ranger (Recreation Technician) for the Bureau of Land Management from 1988 to 1993. The area which I regularly patrolled was the Westwater Canyon WSA. I have been involved in the public process since the public county meetings were held in Moab, Utah, this year. Additionally, I have spoken with various people in positions with access to information as to how this 1800 plus acres was deleted.

KEY POINT: Deletion is Based on Undue Influence and Conflict of Interest by a Public Official

The BLM has spent an enormous amount of time, energy, and resources evaluating BLM land in the state of Utah for wilderness consideration. The Westwater Canyon WSA, an area with which I am intimately familiar, has been seriously misrepresented in the Utah Wilderness Bills HR 1745 and S 884. As a direct result of pressure from Mr. Raymond Pene, who is a Grand County Council member and an owner of the mining claims located within the deleted area, a 4 - 3 vote by the Grand County Council resulted in over 1800 acres being eliminated from the extreme north end of the Westwater Canyon WSA. This Ray Pene Deletion starts at the northern-most boundary of the WSA and extends south for approximately one and a half miles to cover both sides of the Colorado River (See included map, attachment 1). The Ray Pene Deletion encompasses 960 acres of placer mining claims, the Pussycat claims, and some additional acreage of lode claims, the Kelli Jo claims, which overlay and in some cases extend beyond the Pussycat claims. Council member Ray Pene, his brother Ron Pene and several other people are claimants of record of these claims in a partnership known as Pene Mining.

The Ray Pene deletion of the northern 1800 plus acres came about as a result of the following series of events. Public meetings were held in Moab to give public input to the Grand County Council's recommendation to the Utah Governor's delegation for wilderness in Grand County. Soon after these meetings had been held the Governor's delegation attempted to meet with the entire seven member Grand County Council in private to fix wilderness boundaries in Grand County for the Utah bills. Due to the private nature of this decision making meeting in a supposedly public process, the Grand County Attorney advised against the Council meeting with the delegation. In response to this, the seven member council met with the delegation representatives, on or about March 13, 1995, in two separate groups of three members. One of these groups of three council members was comprised of Ray Pene, Bart Leavitt and Bill Moser.

It was at this private meeting that a deal was made to delete from the Westwater Canyon WSA the 1800 plus acres surrounding and including Ray Pene's and Ron Pene's Pussycat and Kelli Jo mining claims. Part of this deal included Grand County's agreement to leave the Negro Bill Canyon and Mill Creek WSA's in their recommendation for the Utah delegation sponsored bills HR 1745 and S 884 in return for the Ray Pene Deletion of 1800 plus acres from the Westwater Canyon WSA. It was only after several hours of heated debate that the issue was brought to a vote in a later meeting of the full council and passed.

The Ray Pene Deletion from the Westwater Canyon WSA was passed on a 4 - 3 vote. Ray Pene voted in favor of the deletion and played an intensely active role in getting the land surrounding his and his brother's mining claims removed from the Utah Wilderness Bills HR 1745 and S 884. His actions represent a serious conflict of interest. Grand County council member Ray Pene used his power and influence as a council member to have this very important part of the Westwater Canyon WSA, the first 1.5 miles of the Colorado river corridor, removed from the Utah bills for one reason: the 1800 plus acres surround and include his mining claims. Claims covering an area that was mineral surveyed by the U. S. Bureau of Mines in 1986 and found to have small placer deposits of gold with an estimated total value of \$10,000.

KEY POINT: Deletion is Contrary to BLM Recommendations

This deletion by council member and claim holder, Ray Pene, completely disregarded the BLM's Wilderness Inventory results. The BLM inventory, in deciding on areas for wilderness consideration, required the adherence to strict criteria and standards as set forth by the Wilderness Act of 1964, FLPMA, the BLM Wilderness Inventory Policy, the BLM Wilderness Study Policy, the BLM Wilderness Management Policy and NEPA. As indicated by the present public controversy concerning the BLM's recommendation of the bare minimum of BLM managed public lands for wilderness consideration when compared with the Utah Wilderness Coalition supported bill H.R. 1500 for 5.7 million acres of wilderness, the 1800 plus acres which were removed from the present Utah bills as a direct result of Ray Pene's influence were in every way worthy of inclusion in this bill. These acres were in the final BLM wilderness recommendation.

KEY POINT: 1800 Acres are Removed Arbitrarily

This acreage surrounding and including the Pene mining claims was removed from the Westwater Canyon WSA UT-060-118 final BLM proposed acreage of 26,000 acres in an arbitrary manner. There was no on the ground study accomplished. It's only purpose being to remove the mining claims belonging to Ray and Ron Pene from the wilderness bill. This was done in spite of the BLM's Wilderness Inventory and recommendation.

KEY POINT: Unpatented Mining Claims are not a Property Right

To further understand the Ray Pene Deletion of 1800 plus acres containing mining claims which he and his brother own, the reader should be aware of how these claims were acquired and how the claimants have conducted their operations on the claims (see attachment 2, Westwater Withdrawal and Mining Claim History). The Pussycat group of 6 placer claims, of which county council member Ray Pene and his brother Ron Pene are claimants of record, consist of 960 acres. These claims were located in 1984 during a window created when BLM failed by negligence and oversight to file the necessary paperwork to continue to segregate the proposed Wild and Scenic corridor area in Westwater Canyon from the mining laws. This oversight was never intended to be permanent, as BLM continued to file for mining segregation of the area beginning again April 26, 1985, and most recently gaining approval for a 50 year withdrawal on November 23, 1993. The Kelli Jo group of 22 claims was located in 1991 during a period when an active Wild and Scenic River segregation was in place. Some of these claims fall within the boundary of this segregation and have highly questionable legitimacy according to the Utah State BLM office.

KEY POINT: Illegal Activities are Used as Justification for Deletion

Since beginning my position as the seasonal Westwater river ranger in April of 1988, I did not at first notice any significant surface disturbing work being accomplished by the claimants. I did note however that among other things listed on the annual work affidavits posted on the claims, the claimants listed road improvement work and building maintenance. Other than occasional fresh vehicle tracks across grass covered 2-track ruts, I did not notice any road work until August 18, 1992. There has never been any noticeable building maintenance performed by the claimants between April 1988 and November 1993, my tenure as a seasonal ranger at Westwater. Pictures of these buildings are provided (see photo, attachment 3). These pictures show two old,

collapsing, co-located structures and one old dug out cabin that is listed and protected under the National Historic Preservation Act.

During the summer of 1991, I noticed a definite upgrade of the type of work being conducted on some of the claims. The work appeared to have utilized a mechanized front end loader to scrape and dig over individual surface areas. As a result of the report I made, Mr. Penc was called into the BLM office and advised by the BLM Area Manager, Brad Palmer, that any type of work other than "pick and shovel" on his claims within the Wilderness Study Area might require his filing a Plan of Operation and having it approved by BLM before commencing work.

Despite this meeting, the following summer on August 18, 1992, I discovered new and extensive grading of the old, rutted tracks along with other areas of major disturbance to include the uprooting of some juniper trees. All of this had occurred on the Pene Mining claims, within the Westwater Canyon WSA (see attachment 4, Road and Surface Activity in the Westwater WSA with attached pictures). As a result of this report and a follow-up inspection of the area by BLM officials, a trespass was issued to Ron Pene along with a reclamation order. This trespass was appealed to the IBLA by Mr. Pene. To this date no ruling has been forthcoming from IBLA. It is important to note that despite many previous notifications to both Ron and Ray Pene by BLM of the necessity to file a Plan of Operation and have it approved before commencing work, they have consistently refused to do so. Prior to the extensive road work with a steel-tracked bulldozer by Ron Pene discovered on August 18, 1992 for which he was trespassed, Ron Pene was again advised during a telephone conversation with BLM of the necessity of prior approval before doing this type work within a WSA (see attachment 5, Record of WSA IMP Monitoring, Westwater Canyon, dated 8-21-92). No Plan of Operation or notice was given by Ron Pene to the BLM prior to accomplishing this work.

A discovery by three BLM officials during an April 13, 1994, inspection of that area of the Westwater Canyon WSA in which the Pene Pussycat and Kelli Jo mining claims are located, resulted in again finding work completed by the mining claimants which would require a Plan of Operation. It was recommended by the BLM official making the report that BLM "again issue a trespass notice or get a citation and get a restraining order to correct this reoccurring action" (see attachment 6, Wilderness Study Area Monitoring Report Westwater Canyon WSA UT-060-118). No action was taken by BLM regarding this recommendation.

Again in 1995 there is ongoing activity on the Pene mining claims similar to that taken in the past. Specifically, there is a large diesel operated water pump that has been transported to the claim area within the WSA. Witnesses have observed this pump in operation pumping water from the Colorado River in placer mining type activities. No Plan of Operation has been filed with the BLM and no action has been taken by BLM to assure compliance with this requirement by the claimants. This same activity was being conducted during the summer of 1994, subsequent to the April 13, 1994, report recommending that the Pene activity be trespassed and a restraining order issued.

It is noteworthy to include the July 14, 1994, letter from BLM Grand Resource Area Manager, Brad Palmer to Ron Pene (see attachment 7, Brad Palmer letter). This letter again reiterates that the Pene Mining claimants had full advisement as to the requirement for the filing of a Plan of Operation with BLM for certain mining activities on their Pussycat and Kelli Jo claims. To date, August 2, 1995, no Plan of Operations has been submitted to BLM by the claimants and no action has been taken by the Grand Resource Area office or the Moab District office to assure that the Westwater Canyon WSA, UT-060-118, is being protected from unnecessary or undue degradation as required by 43 CFR 3802.1-1; 3809.0-2(a) and 3809.0-2(d), as it pertains to the Wild and Scenic Rivers Act (16 USC 1280). In addition Sec 603 of the Federal Land Policy and Management Act of 1976 (P.L. 94-579) requires by Congressional mandate that during the period of wilderness review the Secretary shall continue to manage such lands according to his authority in a manner so as not to impair the suitability of such areas for preservation as wilderness. According to the BLM Wilderness Management Policy, a Plan of Operations shall include measures to be taken to prevent unnecessary or undue degradation of the area resulting from the proposed operation. Even though BLM GRA Manager, Brad Palmer states in a letter to the Regional Solicitor, Intermountain Region that the physical damage to the Westwater Canyon WSA resulting from the October 5, 1992, trespass action of Ron Pene may have impaired its wilderness characteristics, BLM continues to allow the claimants to work in the area without filing the required Plan of Operation (see attachment 8, letter to Regional Solicitor from Brad Palmer, Area Manager dated February 16, 1993).

KEY POINT: Inclusion of the Deleted Portion is Critical to this Potential Wilderness Area's Integrity

In closing I would like to stress the importance the deleted 1800 plus acres, including 1.5 miles of the Colorado River corridor, have to the Westwater Canyon proposed wilderness. As already mentioned, the area most certainly meets all the required standards for wilderness as inventoried under strict BLM guidelines. Although the Ray Pence Deletion may seem small in size when compared to the total acreage of any bill on wilderness that meets the test of the vote of Congress, its size when compared to the importance it holds for the Westwater Canyon Wilderness Study Area as a wilderness is paramount. It is like taking a magnificent human sculpture and removing the two eyes and nose, then saying what does so small a portion mean to the whole figure.

On one side of the canyon, the "Ray Pence Deletion" removed an area where a sheer Wingate sandstone cliff rises over 500 feet straight up from the river. The red color of this wall as it sweeps down river is punctuated by the first glimpse a visitor has of the smooth, polished black 1.5 billion year old Precambrian schist rock. On the opposite side of the river within a short hike across a flat expanse, accessible to people of all levels of physical ability, are several short canyons hiding themselves in another red sandstone cliff wall. Unlike the sheer wall across the river, this wall has been carved and shaped into dimensions only one's imagination can describe. Enter into these short canyons and depending on the time of day, or year, one will find respite from the harsh sun among ledges and boulders of all sizes and shapes, colorful displays of shade loving flowers or the subtle changing light of a sunrise or sunset. While in one of these short canyons there is the possibility the flute like call of a canyon wren might abbreviate the ringing in your ears as the brain attempts to mask the sound of stillness. In this area and above your head it is quite possible to catch a glimpse of a peregrine falcon falling out of the sky, wings folded to diminish the effects of aerodynamic forces on its wings from flight in excess of 180 mph; its target a barely discernible white throated swift, no slouch in its flight maneuvers either. While gazing upward it is equally possible to capture, against a sky so blue you feel as if you are a sea creature hiding in a coral outcrop in some cavernous abyss, the sight of a bald or golden eagle soaring on the thermals.

It is here at the beginning of Westwater Canyon that the first rapids of the canyon appear, a mere primer for the excitement to come. It is also here in the first mile and a half of river corridor that

one begins to feel the isolation and majesty of Westwater Canyon, just as Frank C. Kendrick must have as the first person to run a boat through Westwater on March 26, 1889. What many people don't realize though is that beneath these beginning rapids, and in the eddies which define them, is one of the primary breeding areas of a native fish species, the humpback chub. This much studied fish is a resident which has been with us for over 10,000 years, still clinging to the pools of its ancestors.

As a ranger at Westwater, I've talked with thousands of people who had come to the canyon for solitude and excitement. Most of them come to enter this magnificent, unique canyon by river. They come from all over this country and from many parts of the world. They come in droves from Salt Lake City and Denver and all the smaller towns in between. Some of them, like the fish, look as though they are here because their ancestors were here. Others are fresh out of the new West, here because they've heard of the canyon's beauty and challenge. In my eight years as a seasonal ranger, I have watched children who were merely passengers "riding" with their parents mature into competent, able-bodied boatmen, no matter their gender and in spite of their age.

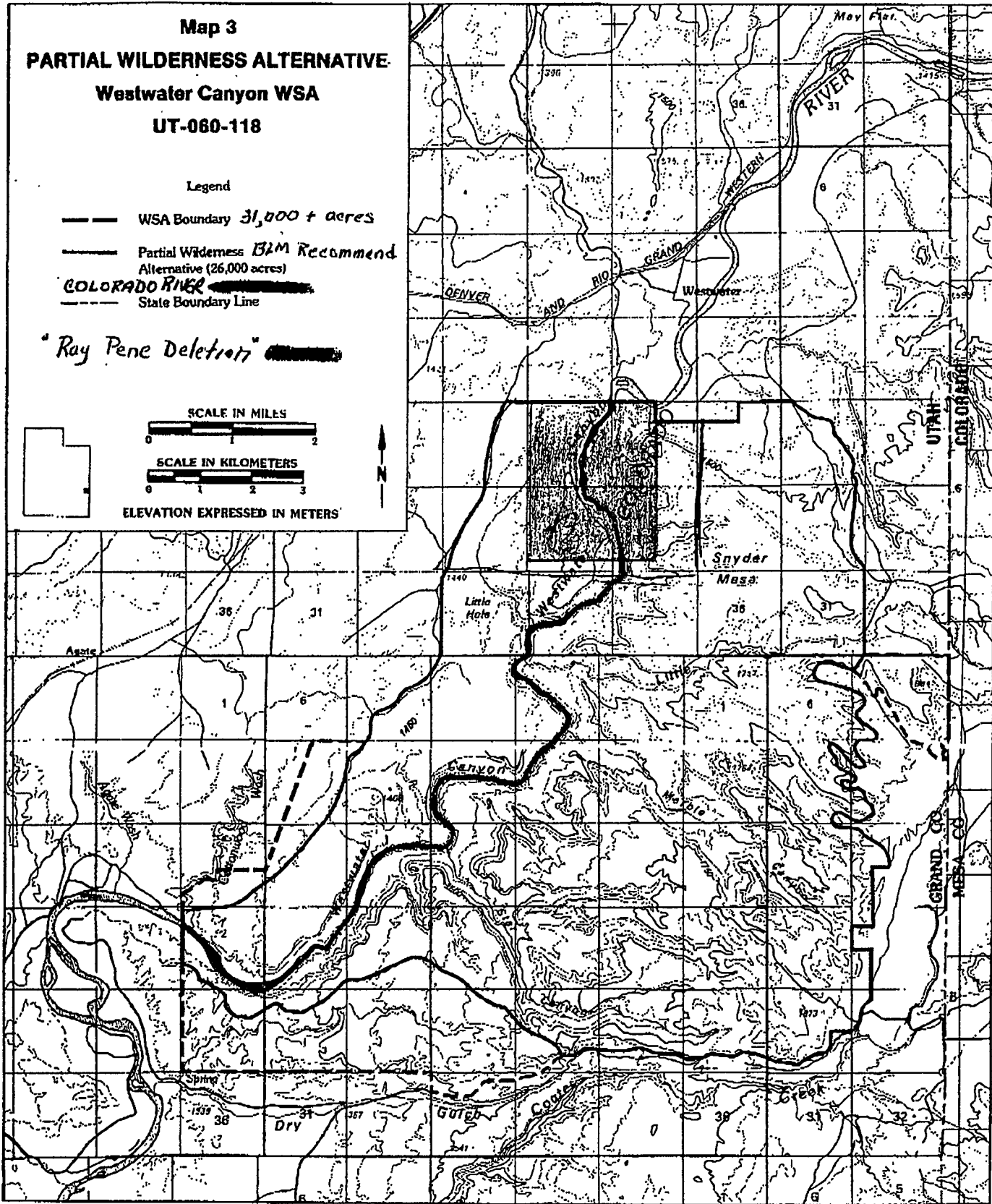
The first mile and a half of Westwater is as important to this canyon, to its native residents and to the people who have come and who will come, as the cherry blossoms are to Washington, D. C. It signifies the start of a new beginning, no matter how many times you've walked the town, no matter how many times you've been through the canyon. The beginning is one of five places in the canyon almost anyone can access to experience the "off-river" life which survives in so delicate a balance. It's the first place a group can camp in the canyon on a late launch after a long, hot drive from the city. It is the place where the Westwater wilderness experience begins.

Sincerely,

Skip Edwards
480 4300 Lane
Crawford, Colorado 81415
970/921-3034

WESTWATER CANYON WSA

Attachment 1



T. 20 S

22/23
27/26

T. 21 S

R. 24 E

R. 25 E

(1)

1

Gene Mining Boundaries:

**Pussyat
::: 1-6
Phaet Claims**

Kell: Jo 1-22

 code claims

Westwater Canyon WSA
UT-060-115



Attachment 2

WESTWATER WITHDRAWAL AND MINING CLAIM HISTORY

January 3, 1975 Amendment to Wild & Scenic Rivers Act segregates Westwater Canyon from the mining laws until September 30, 1982

1984 Pussycat group (6) of claims located

April 26, 1985 Area again segregated from mining laws until April 25, 1988

April 1, 1988 Area withdrew from surface entry and mining laws until March 31, 1990

December 28, 1988 Area again withdrew from surface entry and the mining laws for five years

1991 Kelli Jo group (22) of claims located, even though area was withdrawn from surface entry.

November 23, 1993 BLM receives approval for 50 year withdrawal

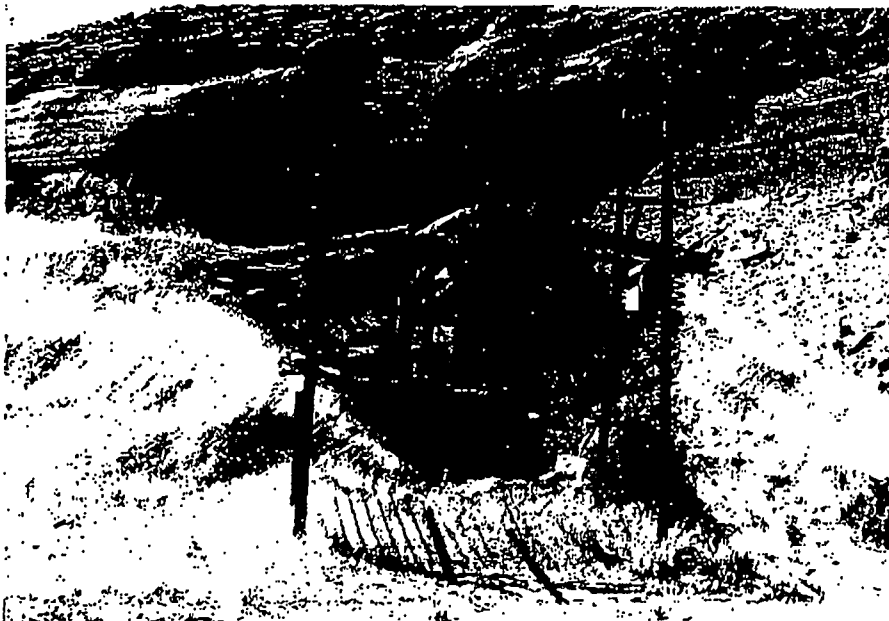
Attachment 3



OLD MINERS CABIN
SOUTHERN END
OF CLAIMS



OLD MINERS CABIN
NORTHERN END
OF CLAIMS



OLD MINERS CABIN
SOUTHERN END
OF CLAIMS

Attachment

(4)

Moab District
Grand Resource Area
885 So. Sand Flats Road
Moab, Utah 84532

To: Alex VanHemert, Recreation Planner
From: Skip Edwards, Recreation Technician
Subject: Road and Surface Activity in the Westwater WSA (Miners' Cabin Vicinity)

On August 18, 1992, volunteer Doreen Dethmers and I were hiking in the Westwater Wilderness Study Area for the purpose of WSA IMP monitoring. The location of our intended monitoring was the rim top on the west side of the Colorado River, immediately across from the miners cabin historic site, to a point downstream about 2 miles. While hiking this area, we were also afforded an aerial view of the entire east side of the river from the river's edge to the vertical sandstone cliff about ½ mile farther east (the west rim is about 500 feet above the east side). This area is also in the Westwater WSA; specifically the E½ of Section 22, W½ of Section 23, and NE¼ of Section 27, NW¼ of Section 26, T 20S., R 25E., Agate and Westwater 7.5 quadrangles. Within the confines of the area which we were overlooking is the Ron Pena Fussycat 1 through 6 claims.

Very visible to us from the high vantage point on the west side of the river was what appeared to be new and extensive grading of an old 4-wheel drive road, creation of some new roads and some freshly dug pits near the Colorado River. Seemingly, a large steel treaded machine had been used to accomplish the work, as the tracks were easily visible through binoculars. I verbally reported this information to Alex VanHemert on 8/19/92, during a trip to Moab from the Westwater ranger station, and was instructed by him to locate on a map the road work and areas of disturbance. On 8/20/92, Doreen and I again hiked the westside rim to draw and map depictions of what I had reported.

To verify our original sightings, Doreen and I spent the entire day of 8/25/92, hiking all the roads and disturbances we had observed from the west rim. The following is a report on what we found and my impression of the area compared to what was there prior to the new activity.

In order to help make clearer this report of new surface disturbance activity within the Westwater WSA, I have included the following four attachments:

1. A 2x enlargement of sections 15, 22 and 27 of the Agate, Utah, 1985, edition of the USGS 7.5 minute series map and sections 14, 23 and 26 of the same edition of the Westwater quadrangle.
2. A 4x hand made enlargement of two areas of major disturbances at the south end of the described area.

3. A summary and location of six AFFIDAVITS of LABOR and IMPROVEMENTS for Pena Mining/A&R Mining, Pusycat 1-6 claims.
4. A discussion of photo locations and what is pictured to be included with this attachment will be the photographs taken during our hike of the area (photo's will be lettered to correspond with matching letter locations on the map).

During our hike and inspection of the area, we found that 90% (estimated) of all pre-existing 2 rut roads had been tracked and scraped with some type of large heavy equipment to give them the appearance of severe mechanized scars on the surface soils and vegetation. Prior to this inspection, there was the existence (noted on the map) of a 4-wheel drive road. This road was overgrown with vegetation; but, it was definitely visible to someone needing to access their mining claim to accomplish the annual required work. Since the recent disturbance, almost all of the vegetation has been scraped from the road and the center hump of the old road has been levelled. This gives the appearance of a flat, wide road where before it just looked like an old seldom used trail. It is interesting to note that the "grading" of this road started precisely at the WSA boundary post at the north end of the WSA. The location of this post, which was installed last fall by BLM volunteers, is not accurately surveyed. Its placement is only approximate with respect to the actual boundary. This is important due to another road which was graded from a point just outside the location of this post for a distance of approximately 600 feet to the base of the sandstone cliff. At the end of this spur a pit trench was dug by machine. It must be noted that due to the unsurveyed location of the WSA post, this road and trench could be within the WSA. I am not sure if this road was constructed over an old road, but no such road exists on the map.

There has been extensive upgrading of the access from claim marker #4 (on the map), post #5 to the end of the spur road which is depicted at the south end of the map. A considerable amount of surface disturbances most probably occur in the proposed Wild and Scenic corridor. This area is shown on the hand drawn enlargement marked #11. I walked this area in late April ('92) and no such work has been performed at that time.

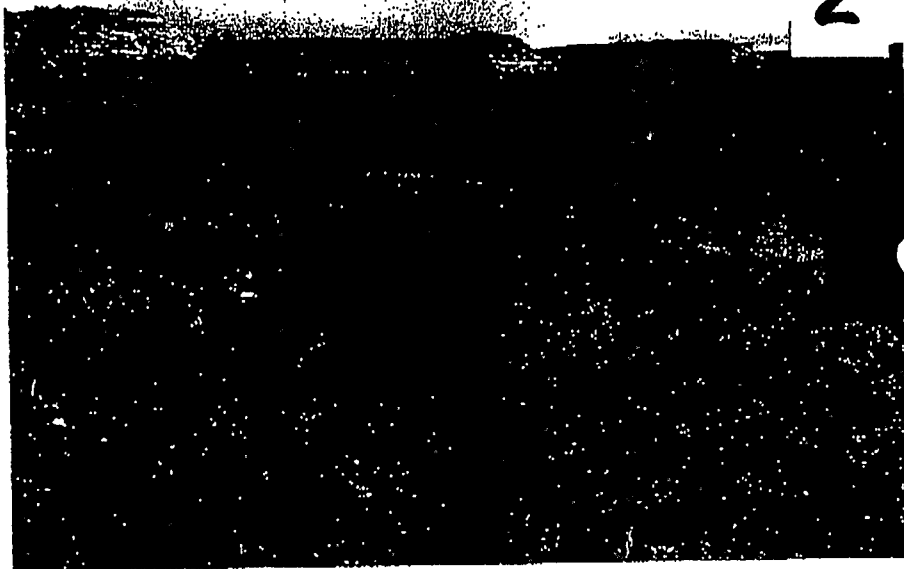
Also located on enlargement #11 is shown claim marker #6. This area has been heavily impacted by road upgrading and surface pit. The area of most disturbance is from photo point G to photo point I. This area is also most probably in the proposed construction from the #6 location up to the old existing 4-wheel drive road shown on the 1985 USGS map. The road leading from the old 4-wheel drive road to photo point G was in existence during my previous inspections but has been upgraded as a result of this new activity. I was also inspecting this area last April and several times in 1991 and did not find any disturbances of this magnitude.

The southeastern most area depicted on the map in red, and shown in the #1 enlargement, is the area which has the greatest amount of new road work and disturbance. All of the solid red lines to the left of the old 4-wheel drive road are in my opinion new roads. I first hiked this area in 1988 and noticed the old road. I've been up in that area several times since then and have never noticed any other roads. The recent work in this area has definitely left very noticeable scars, and in one segment (photo point P to O) juniper trees were uprooted and limbs broken off of other trees. At the end of this road (photo point O) there is a new digging which is machine made. It is on the side of a hill and marked with a 4x4 post with the following painted on it--"DISC. B. RAY".

As a final statement, I would like to mention that in past years, and particularly the fall of 1991, the statements on the yearly AFFIDAVIT of LABOR and IMPROVEMENT did not seem to correlate to what I was witnessing in the field. Specifically, the road work which has been mentioned each year since 1988 and the building improvements noted on the 1991 AFFIDAVIT just were not there. To me they appeared to be complete fabrications. I even discussed this with Alex. In so far as the WSA is concerned, there have been absolutely no building improvements and the only road work I was aware of were tire tracks from driving in to the various sites.

Harry M. Edwards
HME

2



7



5



MOAB DISTRICT, UT-060

Attachment 5

RECORD OF WSA IMP MONITORING

WSA Name: WESTWATER CANYON - UT-060 - 11.8Date(s): 8-21-92Name of Person Making Visit: A. VANHEMERT, L. GREERGeneral Location(s) Checked in WSA: THE BENCHES IN THE
MINER'S CABIN AREA

Observations:

Number of Recreation Visitors Observed: 0Activities of Visitors: —

Other Activities or Evidence of Past Activities Observed: THE WAY INTO MINER'S CABIN HAD BEEN BLADED BY A TRACKED VEHICLE (SEE PHOTO #2). ALSO BLADED WERE SEVERAL ROUTES WHICH DO NOT SHOW AS WAYS IN THE INTENSIVE INVENTORY FOR WESTWATER CANYON (SEE PHOTO #1 AS AN EXAMPLE). SEVERAL OF THE BLADED ROUTES HAD CUT BANKS AND VEGETATION PUSHED ASIDE (SEE PHOTOS 3-58). THE WORK APPEARS RECENT AND ACCORDING TO "B.J.", A WORKER AT MOUNTAIN ISLAND RANCH, A BULLDOZER WAS SEEN GOING INTO THE AREA ABOUT THE 11TH OF AUGUST. B.J. SAID THE MINING CLAIMANT, RON PERE, WAS THE PERSON OPERATING THE BULLDOZER.

Wang #1175e

ABOUT THE THIRTEENTH OF JULY MR. PERE CALLED THE GRAND RESOURCE AREA OFFICE AND TALKED WITH SAL VENTRONE AND ALAN VANHEMERT TO DISCUSS ROAD MAINTENANCE TO HIS MINING CLAIMS. HE WAS INFORMED BY BOTH PERSONS THAT HE WOULD NEED PRIOR APPROVAL TO DO THIS WORK IN THE WSA.

Ally VanHemert

Lehmann + (6)

WILDERNESS STUDY AREA MONITORING REPORT
WESTWATER CANYON WSA UT-060-118

On April 13, 1994 Alex VanHemert, Marilyn Peterson, and Bruce Louthan went to the Miners Cabin area to look at fencing alternatives and to check on mining assessment work. Also accompanying the trip was Dave Lehmann of the Grand Junction Resource Area. We had gotten a report from the adjacent Mountain Island Ranch that the travel routes had been bladed about the last part of March.

Upon getting to the WSA we noted that the WILDERNESS STUDY AREA boundary sign had been removed and was not in evidence any where around. There were new plexiglas covered mining claim markers with 1993 notices (see slide # 1). The travel routes did appear to have had some work done on smoothing them out but they didn't appear to have been bladed. In some locations grasses from the previous summer were present. Along numerous places new grasses were growing, these grasses, about an inch in height, were likely the result of rains over the last several weeks. When we reached the south end of the travel routes we found a metal drag (see slides # 14 and 15). The drag is designed to be pulled behind a vehicle and smooth out the route. Where the route is not level the drag will skip over parts of the route, which explains the grasses from the previous summer. The drag looked to have been parked at the same location twice, likely after doing the 1993 and 1994 assessment work. The already present assessment pit had some minor hand shovel work in them.

The mining claimant is aware of when a plan of operation is required due to our trespass of him in 1992. Both the 1993 and 1994 assessment work would require a plan of operations under 43 CFR 3802.1-1 (d) as he used a motorized vehicle in a closed OHV area within a WSA. I recommend that we again issue a trespass notice or citation and get a restraining order to correct this reoccurring action.

- SLIDE # 1: New assessment markers with 1993 notices
- SLIDE # 2: New spur route in 1992, grasses appeared to be a couple weeks old
- SLIDE # 3: Main access route
- SLIDE # 4: Main access route shows signs of recent dragging
- SLIDE # 5: Same as #4
- SLIDE # 6: Spur route going towards river
- SLIDE # 7: Spur route going to DISC.B.RAY pit
- SLIDE # 8: DISC.B.RAY pit with recent shovel work
- SLIDE # 9: DISC.B.RAY pit
- SLIDE # 10: Cut bank on route to DISC.B.RAY pit, 1992 work
- SLIDE # 11: Route with recent dragging
- SLIDE # 12: Pit with recent shovel work
- SLIDE # 13: Cross country travel adjacent to an exploration pit
- SLIDE # 14: The drag used for route maintenance
- SLIDE # 15: Reverse shot of the drag

Attachment 7

Moab District
Grand Resource Area
885 South Sand Flats Road
Moab, Utah 84532

8500
(UT-068)

CERTIFIED MAIL-Return Receipt Requested
Certification No. Z 007 272 230

JUL 14 1994

Mr. Ronald Pena
P. O. Box 4017
Grand Junction, Colorado 81502

Dear Ron,

We appreciate you taking the time to meet with us on July 11, 1994, in Moab concerning activity on your Pussycat placer claims (UMC lead file 277243), and the Kelli Jo lode claims (UMC lead file 343404) within the Westwater Canyon Wilderness Study Area (WSA). The regulations at 43 CFR 3802 address mining-related activity within WSAs. We feel the primary issues relative to your activity on the subject claims are found under subpart 3802.1-1, concerning when a Plan of Operation is required. Specifically:

(a) Any mining operations which involve construction of means of access, including bridges, landing areas for aircraft, or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities;

(d) Any operations using motorized vehicles over other than open use areas and trails as defined in subpart 8342 of this title, off-road vehicles, unless the use of a motorized vehicle can be covered by a temporary use permit issued under subpart 8372 of this title;

In the past, we may have failed to adequately communicate the fact that this area is "closed" to motorized vehicles, without specific authorization as a result of decisions reached in the 1985 Grand Resource Management Plan (RMP). Such authorization would also give us the opportunity to determine if the level of activity proposed is non-impairing under our existing Wilderness Interim Management Policy (IMP). Your past activity on the subject claims, in our opinion, required a Plan under subpart 3802.1-1(a), and most certainly met the requirements under subpart 3802.1-1(d). Since our July 11th meeting, we have been advised by the Solicitor (BLM's legal counsel), that the provisions as outlined under 43 CFR 3802.1-1 requiring a Plan of Operations are the appropriate means to address the IMP requirements and provide you the necessary authorization to utilize motorized vehicles in conducting your work on the subject claims.

(1)

You appealed our earlier October 10, 1992, trespass notice and decision requiring a Plan of Operation, which focused primarily on rehabilitation of the prior disturbance. The case is currently before the Interior Board of Land Appeals (IBLA). We now feel there is an excellent opportunity to work together to address and facilitate your future sampling and exploration activity on the subject claims, while ensuring we as an agency meet our mandate to protect the wilderness suitability of the area.

As you pointed out, you are prepared to take whatever legal action is necessary to protect your rights. We too have legal remedies as provided in the regulations [(43 CFR 3802.4-1(a)] that would enjoin you from continuing operations on the claims. But we are sure you'll agree, the prudent course of action would be to first pursue the administrative provisions available to resolve the problems at hand.

Therefore, we would ask that you prepare and submit to this office a Plan of Operations at least 45 days prior to any further activity involving the use of a motorized vehicle or other activities prescribed under 43 CFR 3802.1-1. We did agree that you would be able to remove the trailer and testing equipment currently onsite prior to submission of the Plan.

Again, let me thank you for taking time to visit with us and reestablish good communication. Should you have any additional questions, please contact Alex VanHemert or Sal Venticinque at your earliest convenience.

Sincerely,

/s/ BRAD D. PALMER

Area Manager

cc: Regional Solicitor
Office of Regional Solicitor
Federal Building, Suite 6201
125 So. State
Salt Lake City, Utah 84138

UT 060, DM, Moab District
UT 920, Deputy State Director, Utah

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Attachment 8

Moab District
Grand Resource Area
885 South Sand Flats Road
Moab, Utah 84532

3802
(UT-068)

Memorandum

To: Regional Solicitor, Intermountain Region
Through: State Director, (U-920)

From: Area Manager, Grand Resource Area

Subject: Transmittal of Case File

FEB 16 1993

Re: Appeal of Trespass Notice
Westwater Wilderness Study Area
Mining Claims UMC 277243 - UMC 277248
Ron Pene, Claimant and Appellant

Enclosed please find the original case file for the above referenced appeal. We apologize for the delay in transmitting the file, the delay resulting in part from confusion as to whether or not the appeal was actually submitted to and docketed by the Interior Board of Land Appeals (IBLA).

In brief, this appeal was filed by mining claimant Ron Pene in relation to a notice of trespass sent to Mr. Pene by the Grand Resource Area on October 5, 1992. The notice of trespass resulted from unauthorized work conducted by Mr. Pene on portions of the above referenced mining claims located within the Westwater Canyon Wilderness Study Area (WSA). Based on a field investigation of this work, it is our opinion that the nature of the work conducted by Mr. Pene on these claims would have clearly required a Plan of Operations in accordance with provisions of 43 CFR 3802 regulations, primarily since a tracked vehicle was used and new roads constructed within the WSA.

Mr. Pene had originally filed a Notice to conduct assessment work with the Utah State Office (USO) by letter dated June 26, 1991. The USO notified Mr. Pene by letter dated August 1, 1991 to submit the Notice directly to the GRA. Mr. Pene then submitted a copy of the assessment Notice to GRA, with GRA receiving this correspondence on August 6, 1991. By letter dated August 13, 1991, the GRA returned Mr. Pene's notice with a request for further information on his proposal prior to processing of the Notice.

(1)

The August 13, 1991 correspondence to Mr. Pene also included a copy of the 43 CFR 3802 regulations for his use in submitting relevant and proper information regarding his proposal to conduct work on those portions of his mining claims located within the Westwater Canyon WSA. To the best of our knowledge the work identified in the 1991 assessment Notice was never conducted.

No further correspondence or activity occurred regarding this situation until August 18, 1992 when GRA's Westwater Canyon River Rangers discovered significant surface disturbing activity had taken place on the mining claims without BLM's knowledge. The nature of this activity is well documented in the staff report prepared by the Westwater Rangers and enclosed in the case file.

By letter dated October 5, 1992 Mr. Pene was served a notice of trespass, instructed as to what would be required to rehabilitate the damage as a result of this trespass, and given the right of appeal to IBLA in accordance with provisions of 43 CFR 4.400.

By certified letter dated October 19, 1992, Mr. Pene acknowledged receipt of the October 5, 1992 trespass notice, acknowledged conducting said work, and informed GRA that an appeal would be taken. This letter and notice of appeal was also sent to the Regional Solicitor's office.

By correspondence dated January 26, 1993, Mr. Pene's legal counsel requested a Motion for Judgement on the Pleadings before the U.S. Office of Hearings and Appeals regarding the appeal.

This background brings us to the current situation, with two issues that need to be addressed at this time. The first issue involves notice of appeal to IBLA. There is reason to believe that Mr. Pene and his legal counsel may have never formally notified IBLA of the above appeal, and may have simply notified the GRA and the Regional Solicitor of their intent to appeal. Consequently, the appeal may be moot as formal notification of appeal to IBLA may not have been made.

The second issue involves a recommendation for expedited review in the event IBLA determines notice of appeal was timely and correctly filed. Our rationale for requesting an expedited review is that the amount of physical damage resulting from the trespass action may have impaired the wilderness characteristics of the Westwater Canyon WSA. The Bureau's wilderness designations have been completed and forwarded to the President for his consideration prior to final action by Congress. The GRA trespass notice identified the need and requirements for reclamation to repair damage from the work conducted by Mr. Pene. Such rehabilitation, if conducted in a timely manner, may allow preservation of the area's wilderness characteristics prior to the President and Congress initiating final action on this particular WSA.

In closing, if your analysis determines the appeal to be valid, we would request further involvement in assisting your office in preparing a response to the appellant's Statement of Reasons. If you have any questions regarding the situation please contact myself or Lynn Jackson in the Grand Resource Area. Thank you for your attention to this matter, and we look forward to guidance and/or resolution from your office.

Enclosure: Case file as noted

cc: U-065, Minerals
U-062, Resources
Alex VanHemert

/s/ BRAD D. PALMER

LJACKSON/lj 2/9/93